

The 26th May, 1981

No. 9 (1)81-8-Lab. 5979.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Chief Engineer, Irrigation, Haryana, Chandigarh.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 57 of 78

between

DEEP CHAND, WORKMAN AND THE MANAGEMENT OF M/S CHIEF ENGINEER, IRRIGATION, HARYANA, CHANDIGARH

Present.—Shri Khushi Ram, for the workman.

Shri K. L. Madan, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/KNL/7-H-78/16880, dated 3rd May, 1978, under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Deep Chand, workman and the management of M/s Chief Engineer, Irrigation, Haryana, Chandigarh. The term of the reference was :—

“Whether the termination of services of Shri Deep Chand was justified and in order? If not, to what relief is he entitled?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the same. The management filed the written statement and the workman did not propose to file the rejoinder on 3rd May, 1979, issues on the basis of the pleadings of the parties were framed as under :—

- (1) Whether the reference is bad in law as there is no industrial dispute?
- (2) Whether the irrigation department falls within the definition of Industry as given in section 2(J) of the I.D. Act?
- (3) Whether the applicant is covered as a workman as defined under section 2(s) of the I.D. Act?
- (4) Whether the workman is estopped for pursuing his reference and the order of Civil Court, Jind operates as *res-Indicata*?
- (5) As per reference?

The management was proceeded against *ex parte* and the statement of the workman was recorded on 2nd June, 1979. The *ex parte* order was set aside on 7th July, 1979. The summoned witness clerk of the office of Labour Inspector, Jind, was examined as WW-2 on 7th July, 1979. The management examined Shri Nafe Singh, S.D.O., Julana, as MW-1 and Shri Ishwar Singh, S.D.O., Safidon, was examined as MW-2.

I heard the authorised representative, of the parties and seen the record and decide the issues, as under :—

Issue No. 1.—By the introduction of section 2(1) in the I.D. Act the workman alone has been given the rights to raise the dispute in the matter of his dismissal, termination or otherwise without the matter being taken up by his Union or a substantial number of co-workman of the establishment and the dispute raised by the workman shall be deemed to be an industrial dispute. The plea of the management that no industrial dispute existed is not tenable. This issue is accordingly decided against the management.

Issue No. 2.—The parties have not adduced an evidence on this issue. This issue has been decided by my learned predecessor in reference No. 58 of 1973,—*vide* his award dated 25th September, 1975 to what I fully concur. While deciding this issue whether Irrigation Department is an industry my learned predecessor relied on the decision of the Madhya Pradesh High Court between Madhya Pradesh Irrigation Karamchari Sangh, Sambhag Gwalior Chaubail Canal, Sheopur Kalan, District Morena (M.P.) reported in 1972 ILLJ page 374. Their lordships of the Madhya Pradesh High Court while deciding an identical issue held as under:—

“Held it would appear that an activity of an institution would amount to ‘industry’ within the meaning of the Act only if the following conditions are fulfilled:—

- (i) It must be analogous to trade or business in a commercial sense although there be no profit motive.
- (ii) It must be capable of being described as an undertaking resulting in material goods or material service. We find that both the conditions are fulfilled in this case. The project is engaged in rendering material service to the community by providing them irrigation facility. The Government may not be carrying on this undertaking with profit motive but that would not make any difference in as much as the undertaking is analogous to trade or business, as the irrigation facilities are provided on payment of certain charges. Such an activity of the Government cannot be characterised as Governmental or administrative in character. It is essentially a business activity, even though, the motive is general welfare of the people and not profit. We, therefore, hold that the ‘project’ is an industry within the meaning of Act.”

In view of the observations of their lordships of the Madhya Pradesh High Court made in an identical case on all fours with the case under decision. I hold that the Irrigation Department is an ‘industry’ and decided this issue in favour of the workman.

Issue No. 3.—When issue No. 2 has been decided in favour of the workman and it has been held that the Irrigation Department is an Industry any person employed in an industry to do any skilled or unskilled manual work, clerical, supervisory or technical, he will be deemed to be the workman for the purposes of Industrial Disputes Act as given in section 2(s) of the Act. Any such person given in section 2(s), includes the person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute. The management has not led any evidence that the applicant was not their employee and when this much has been admitted the applicant is covered under the definition of workman given in section 2(S) of the I.D. Act. This issue is accordingly decided in favour of the workman.

Issue No. 4.—The management has not led any evidence on this issue. The workman admitted that he filed a suit for injunction in the court of Senior Sub-Judge, Jind, against his suspension. As a matter of fact he stated that the suit was dismissed by the Senior Sub-Judge, Jind, on the ground of limitation and not in merits. The management did not place on file the certified copy of the judgement of the civil court. The order passed by the civil court on the ground of limitations admitting the statement of the workman to be true does not place a bar to pursuing his claim in this court either by way of *res judicata* or estoppel. The issue is also decided against the management.

Issue No. 5.—The case of the management is that the workman was employed as workcharge and he was found absent on 7th July, 1977 and the workman was governed by the provisions of the P.W.D. Code. The services of the workman were terminated in accordance to para 1.29 of the P.W.D. Code after giving him 10 days notice. On the other hand the workman had denied that he was absent on 7th July, 1977 ad he has staged that he has come to collect his arrear of pay as asked by the S.D.O. himself. The workman has claimed that he put in seven years of service with the management. The management has not denied the fact in their written statement nor they have put any suggestion regarding the length of his service during the course of cross examination, hence this fact goes undisputed and is proved. Besides the workman filed a complaint dated, 16th July, 1977 before the Labour Inspector, Jind, which is Exhibit W-1 against the deduction of one day pay for 7th July, 1977 and this fact was discovered by the workman when he received his pay in the month of August, 1977. The management called for an explanation of the workman,—*vide* their letter dated 22nd August, 1977 which was replied by the workman,—*vide* Exhibit MW-2/B, Exhibit M 2/F which is the copy of the arrear bill in respect of the workman and this arrear as received by the workman on 9th July, 1977. This further support the case of the workman that he had come to office to collect his arrear of pay but the management issued notice of termination on 5th September, 1977,—*vide* Exhibit MW-2/G during the reply of the workman to be unsatisfactory and without any substance. The management witness MW-2 could not give any date or time of his visit to the place of duty of the workman. He did not even recollect as to when he left the office. From the evidence of the parties it is clear that the management adopted a revengeful attitude after the workman filed a complaint before the Labour Inspector, Jind, and thought of removing the workman from service. The management had already punished the workman when they deducted one day pay from his wages and the second punishment in terminating the services of the workman was colourable exercise of powers under the guise of P.W.D. Code Rules but it is an unfair labour practice and amounts to victimisation. To terminate the services of a workman of 7 years service to his credit on the charge of one day absence and that too not proved can in no way be held as justified. I am therefore, constrained to hold that the order of termination is not justified and is against the principles of natural justice and the same is therefore set aside. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned in these terms.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Dated 7th May, 1981.

Endorsement No. 1493, Dated 16th May, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,

Labour Court, Haryana, Rohtak.

The 5th June, 1981

No. 9(1)81-8Lab. 6129.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Bharat Carpets Ltd., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 232 of 1979

between

SHRI BANWARI LAL SHARMA, WORKMAN, AND THE MANAGEMENT
OF BHARAT CARPETS LIMITED, FARIDABAD

Present—

Shri K.R.R. Pillai, for the workman.
Shri S.K. Sharma, for the management.

AWARD

By order No. 113-79/34682, dated 7th August, 1979, the Governor of Haryana referred the following dispute between the management of M/s. Bharat Carpets Limited,

Faridabad and its workman Shri Banwari Lal Sharma, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Banwari Lal Sharma was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 29th October, 1979 :—

1. Whether the reference is barred by the principles of *res judicata* ?
2. Whether the Tribunal has no jurisdiction to try the dispute ?
3. Whether the demand has not been raised properly ? If so, to what effect?
4. Whether the omission of the date of termination in reference is fatal to the reference ?
5. Whether the reference is vague ? If so to what effect ?
6. Whether the factory of the management is not situated in Faridabad (Not pressed by the representative for the management) ?
7. Whether the domestic enquiry is proper and fair ?
8. Whether the termination of services of the workman is justified and in order ?
9. Relief.

And the case was fixed for the evidence of the management who examined Shri Sudhir Chadha, Enquiry Officer as MW-1 and Shri Lalit Joshi as MW-2 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and closed his case. Arguments were heard. I now give my findings issuewise :—

Issues No. 1 to 6.—These issues were not pressed by the management, therefore, these issues are decided against the management.

Issue No. 7.—M.W.-1 stated that he was appointed Enquiry Officer to enquire into the chargesheet, Exhibit M-1 to M-3. His letter of appointment was, Exhibit M-4, in respect of chargesheet, dated 18th June, 1978 and 10th July, 1978 and Exhibit M-5 in chargesheet, dated 7th September, 1978. The concerned workman initially participated in the enquiry. He was afforded many opportunities by him. The enquiry proceedings were Exhibit M-6 containing 34 pages. Enquiry finding was Exhibit M-7. Documents placed by the management were Exhibit M-8 to M-36 during the enquiry. Second enquiry was conducted into the chargesheet, dated 29th August, 1978. Its proceedings were Exhibit M-37 containing 1 to 14 pages. The workman did not participate in this enquiry. Finding of this enquiry was Exhibit M-38. The workman was afforded opportunity to participate to cross-examine the management witnesses but the workman did not participate in spite of repeated registered letters and notice printed in the newspaper. The workman was found guilty of the charges. His finding was based on the evidence. In cross examination he stated that he was a practising advocate on labour side. The workman participated in four sittings of the enquiry. Out of the letters sent to him only one letter with endorsement address incomplete was received back undelivered, therefore, it was published in the local newspaper. Exhibit M-27 was produced by Shri Lalit Joshi during enquiry. M.W.-2 stated that the workman was chargesheeted on account of misconduct. The management had received complaint from Shri K.L. Bhalla, Maintenance Engineer. Complaint

was Exhibit M-39. A letter was sent to the police, copy Exhibit M-40. A letter was also sent to the workman copy, Exhibit M-41. He signed copy in token of its receipt. Exhibit M-1, M-3 and M-13 were charge-sheets issued to the workman. Domestic enquiry was held by Shri Sudhir Chadha. The workman participated in the enquiry at the earlier stage.

W.W.-I stated that he was General Secretary of the union previously. The union had served a demand notice on the management for general demands. On 19th September, 1978 when he was going to the labour office he was attacked by Shri Lalit Joshi, Shri Vasdev, Shri Lekh Raj and Shri Jai Parkash. He remained admitted in B.K. hospital upto 2nd October, 1978. He received a chargesheet and a case was registered against him for the happening of 26th August, 1978. The case was withdrawn from the judicial court. He attended enquiry proceedings when he got information. He was not satisfied with the enquiry. He was not informed of the enquiry at proper time. He did not read newspaper "Shere-Haryana". His address was C/o CITU Gopi Colony. In cross-examination he admitted that he had filled in enrolment form, Exhibit M-49, and had given local and permanent address in that form. He denied that address on Exhibit M-21, M-23, M-39, M-26, M-31, M-34, M-36, M-45 and M-46 was correct. He had given his address of Gopi Colony to the management in reply to the chargesheet which was Exhibit W.W. 1/1. He admitted it as correct that he did not inform the management separately about the change of address for correspondence. He denied the suggestion that he was not attacked by Shri Joshi. He admitted it as correct that criminal case against him was still pending but the management had sought permission to withdraw the same. He admitted that he was served three charge-sheets for incidents of different dates. He admitted that criminal case was regarding only charge-sheet. He admitted that enquiry was fixed for 22nd August, 1978 but the next date was not given. He admitted his signatures on page 20 of enquiry. He admitted that the Enquiry Officer had allowed Shri Karan Singh Yadav as his representative. He admitted his signatures on Exhibit M-11 and M-12. He also admitted that he received list of witnesses from the management at the time of enquiry.

The learned representative for the management argued that the workman received charge-sheets and participated in the enquiry. He deliberately stayed away from the enquiry. The Enquiry Officer gave him a number of opportunities to participate in the enquiry. The date was also published in the local newspaper, therefore, the enquiry was held according to the principles of natural justice.

The learned representative for the workman contended that the activities of the concerned workman were disliked by the management. He was attacked by persons of the management and implicated in a false criminal case which was still pending against him. He further stated that the newspaper was not a reliable one because it was not a daily paper and its circulation was also not proved, therefore, the management failed to give opportunity.

I have gone through the enquiry file and find that the workman participated in the enquiry. He demanded list of witnesses and acknowledged receipt of notice of enquiry, etc. in his letter Exhibit M-15 and M-17. It is admitted by him that he was allowed his representative by the Enquiry Officer and also given list of management witnesses. When the workman stayed away from the enquiry he was informed by registered letters but received back undelivered. A notice was published in the local newspaper. Letter Exhibit M-21, M-23, M-24, M-26, M-29, M-31, M-34 and M-36 bear the address given by the workman in his enrolment from Exhibit M-49. Thus non participation of the workman cannot be attributed a fault of the management in not giving adequate information to the concerned workman. His action was deliberate. It is admitted fact that he knew about the enquiry and the Enquiry Officer and he participated in the enquiry a number of times. It leads me to the conclusion that he was afforded ample opportunities to participate and cross examine management witnesses and lead his defence but he did not avail that opportunity. As regards the enquiry I find that it was held on a number of days. Five witnesses were recorded by the Enquiry Officer besides receiving documents by him. I have gone through

his finding and find that it is based on the evidence available on file. The workman was found guilty by him on various charges levelled against him in the charge-sheets. The charges are insulting, humiliating and abusing and beating of Shri Bhalla, Maintenance Engineer of the management. These are serious acts of misconduct as per Certified Standing Orders, Exhibit M-48, therefore, in these circumstances, I hold that the enquiry is fair and proper and the finding is based on reliable evidence.

Issue No. 8—M.W.-2 stated that the enquiry report was considered by Shri R.N. Gupta, Director of the management and he passed dismissal order, Exhibit M-42. It was sent to the workman by registered post. Postal receipts were Exhibit M-43 and M-44. Registered covers received back undelivered were, Exhibit M-45 and M-46. The arbitration proceedings before Shri M. Kuttappan, I.A.S. were Ex. M-47.

I find that the workman was found guilty of the charges of grave misconduct for violence and disorderly behaviour in which a Maintenance Engineer of the management was a victim. The punishment prescribed for the offence was dismissal according to the Certified Standing Orders. I do not find any reason to interfere in the decision of the management in awarding punishment to the workman, therefore, this issue is also decided in favour of the management.

Issue No. 9—The workman is not entitled to any relief. While answering the reference I give my award that the termination of services of the workman was justified and in order. The workman is not entitled to any relief.

Dated the 9th May, 1981.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 493, dated 22nd May, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 9(1)81-8Lab/6133.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Technological Consultants Centre, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD

Reference No. 291 of 1979

between

SHRI BUTA RAM, WORKMAN AND THE MANAGEMENT OF M/S.
TECHNOLOGICAL CONSULTANTS CENTRE, FARIDABAD

Present :—

Shri Sagar Ram Gupta, for the workman.

Shri R. C. Sharma, for the management.

AWARD

By order No. FD/56-79/41032, dated 18th September, 1979 the Governor of Haryana referred the following dispute between the management of M/s Technological Consultants Centre, Faridabad and its workman Shri Buta Ram, to this Tribunal, for adjudication, in exercise of the powers conferred by clause, (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the services of Shri Buta Ram was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issue was framed on 7th February, 1980 :—

(1) Whether the termination of services of Shri Buta Ram was justified and in order ? If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management who examined Shri T. K. Thukral, partner M/s. Mactol Industries, Faridabad as MW-1, Shri P. N. Bhatia Purchase Officer as MW-2, Shri N. K. Soni Assistant Works Superintendent as MW-3, Shri N. S. Josen as MW-4 and Shri J. S. Sukla General Administrative and Personnel Officer as MW-5 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as WW-1 and closed his case. Arguments were heard. Now I give my finding on the above issue :—

Issue No. 1 :—MW-1 stated that he knew the concerned workman who had worked for 2-4 days in his factory in the month of May. He did not remember the date which may be 7th, 8th and 9th May, 1979. In cross examination he stated that he had not brought attendance register for the month of May, 1979. He admitted it correct that the name of this workman did not appear in the month of May 1979, nor he had submitted any application for appointment. MW-2 stated that he knew the concerned workman who was seen by him working in M/s. Meetol Industries Faridabad. He had informed Mr. Josen about this fact. He alongwith Shri Josen went to that factory and saw Shri Buta Ram there. In cross-examination he stated that he had not given in writing to the Works Manager, nor he had written about it anything to the Registrar of M/s. Mactol Industries. At that time there were about 10 persons working. He did not know any of them. He denied the suggestion that he was giving false statement. MW-3 stated that Shri Buta Ram had brought application Exhibit M-1 and medical certificate Exhibit M-2 on 8th May, 1979. He had enquired from Shri Buta Ram that he did not appear to be sick. He had replied that he will do like this. In cross examination he stated that he had not brought attendance register. He did not know the period of leave marked in the register. Exhibit M-3 was termination letter. He further stated that he had not given in writing what he had talked to the workman. He denied that the management was annoyed with this workman. He further replied that no charge sheet was given to the workman. MW-4 stated that the workman usually remained absent. He was absent in the first week of May 1979. He was informed by Shri Soni that the workman had given that ESI certificate for leave but he did not look like a sick man. On 9th May, 1979 he was informed Shri Bhatia that the workman was at work with M/s. Mactol Industries. When he went there alongwith Shri Bhatia the workman tried to hide himself. Shri Thukral told him that the workman was working with them. Exhibit M-4 contains signatures of Shri Bhatia at point A and remark of the General Manager at point B. On 10th May when the workman met him in the office he stated that he will not work because he had submitted medical certificate. In cross examination he stated that at the time of issuing Exhibit M-3 ESI certificate of the workman had been received but leave had not been sanctioned. He admitted that no charge sheet about absence was not given to the workman. He denied the suggestion that Exhibit M-4 was prepared after the reference of the dispute. MW-5

stated that he received report Exhibit M-4 from the General Manager. The workman refused to receive Exhibit M-3 and was sent by registered post but was received back undelivered. Exhibit M-7 was letter written to ESI. In cross examination he admitted that no charge sheet or warning was ever given to the workman for his absence. He admitted that on the day Exhibit M-3 was issued a medical certificate from ESI was received with the management. Exhibit M-2 certificate was received on 8th May, 1979. He further replied that no other certificate was received by the management during the period of receipt of exhibit M-2 and issue of Exhibit M-3. He attended the conciliation proceedings and Exhibit M-2 report was received from the Conciliation Officer alongwith which was Exhibit W-2/A. He denied that he had stated before the Conciliation Officer that the management was fed up with the workman. He admitted that the management did not write anything report Exhibit W-2 or against the behaviour of this workman. He denied the suggestion that Exhibit M-4 was prepared after the reference of this dispute and therefore, it was not produced before the Conciliation Officer.

WW-1 stated that he was in the employment of the management since 1976. He was removed from service by letter Exhibit M-3. He was on medical leave from 7th May, 1979 to 14th May, 1979. Medical certificate of the ESI was Exhibit W-3. He was removed from service during the period of leave. He was not given any retrenchment compensation or notice pay. He did not visit the factory during his sick leave. In cross examination he stated that he was present on duty from 1st May, 1979 to 6th May, 1979. Exhibit M-1 contains his signature. He did not know writing, therefore, application was filled in by some other person. He gave it on 7th May, 1979. On 14th May, 1979 he had a talk with Shri Josen. He denied his suggestion that he went to the factory on 10th May, 1979 and on that date Exhibit M-3 was offered to him. He further stated that he did not work in M/s. Mactol Industries. He received Rs. 50/- or Rs. 60/- as leave benefit from ESI.

The learned representative for the management argued that the workman had applied for leave on false ground. He was caught by the management working in other factory during his sick leave. He cited 1965 II LLJ page 44.

The learned representative for the workman argued that the workman had more than three years service at his credit. No charge-sheet was issued to him. Standing Orders were not complied with by the management in terminating the services of the workman. He was terminated during the period of sick leave which was prohibited by section 74 of the ESI Act. Lastly he contended that in case it was a simple termination it was bad in view of Santosh Gupta V/s. State Bank of Patiala 1980 II LLJ page 72.

I have gone through the written statement in para 2 the management alleged fraud and cheating by the workman in the sanction of leave. In para 6 another charge of absence from duty from 1st May, 1979, taking employment with some other firm, making leave application of false ground are also given. MW-1 admitted that there was no application for employment of this workman, nor his name appear in their attendance register and he only worked for 2-3 days. Admittedly MW-1 was interested in the management because he was provided work by the management. In the absence of any documentary evidence it cannot be said that this workman worked with M/s. Mactol Industries. More so under the Factories Act no workman can operate a machine without his name being entered in the register. As regards the other contention MWs have admitted that the workman had submitted ESI certificate Exhibit M-2 dated 7th May, 1979. Another certificate was Exhibit W-3 from 7th May, 1979 to 14th May, 1979. His leave application was Exhibit M-1 from 7th May, 1979. The management letter Exhibit M-7 for clarification of nature of sickness from the Chief Medical ESI dispensary is dated 12th May, 1979 but the same was received by the addressee on 15th May, 1979 according to A.D. card. No clarification in reply to this letter was sought for by the management but it is surprising that the management terminated the services of the workman,—*vide* Exhibit M-3 dated 10th May, 1979. I do not find any justification in writing to the Chief

Medical Officer on 12th May, 1979. From the Conciliation report Exhibit W-2/A it is evident that the management had stated that the services the workman were terminated on the ground that he had spoiled atmosphere of the factory. It is admitted fact that the workman was not called upon to show cause, nor was issued any charge-sheet which was a must when charges of misconduct were levelled against him. It is also admitted fact that his services were terminated during ESI leave which was barred by section 74 of the ESI Act. It is also admitted that no retrenchment compensation or notice pay was paid to this workman.

On my above discussions, I find that the termination of services of the workman is bad in law and against the principles of natural justice, therefore, this issue is decided against the management.

While answering the reference, I give my award that the termination of services of the workman was neither justified nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

The 20th May, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 489, Dated 22nd May, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

The 25th June, 1981

No. 9(1)81-8Lab./6782.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s The Karnal Co-op. Sugar Mills Ltd. Karnal.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 157, 158, 159, 160, 161 and 162 of 1979

Between

S/SHRI HUKAM SINGH, RAM PAUL, DHARAM VIR SINGH, BALJIT SINGH, RAJINDER SINGH AND RAVI PARKASH, WORKMEN AND THE MANAGEMENT OF M/S THE KARNAL CO-OP. SUGAR MILLS LIMITED, KARNAL.

Present:—

Shri Madhu Sudan, for the workmen.

Shri Surinder Kaushal, for the management.

AWARD

These references have been referred to this court by the Hon'ble Governor, vide his order No. ID/KNL/19-78/36798, dated 24th August, 1979, ID/KNL/19-78/36804, dated 24th August, 1979, ID/KNL/19-78/36810, dated 24th August, 1979, ID/KNL/19-78/36816,

dated 24th August, 1979, ID/KNL/19-78/36822, dated 24th August, 1979, ID/KNL/19-78/36828, dated 24th August, 1979 under section 10(i)(o) of the I.D. Act for adjudication of the dispute existing between the workmen and the management of M/s The Karnal Co-op-Sugar Mills Karnal. The term of the reference was:—

Whether the termination of services of the workmen were justified and in order?
If not, to what relief are they entitled?

On the receipt of the order of references notices as usual were sent to the parties who put in their appearance in response to the same, filed their respective pleadings and the following issues were framed on the basis of their pleadings:—

1. Whether the reference is bad as per reasons given in the written statement?
2. As per reference?

My learned predecessor order to consolidate these references as all these involved the common questions of law and fact. Evidence and further proceedings were to be recorded in reference No. 157 of 79 which was to be read in all these cases. By this award I dispose of all these references. The management examined Shri B.S. Bha Assistant Accounts Officer as their witnesses and closed their case. The workmen themselves were examined as their witnesses.

I heard the learned representatives of the parties and have also seen the record. I decide the issue wise as under:—

Issue No. 1.—The management did not lead any evidence on this issue during the course of arguments the management representative in clear terms stated that he does not press for this issue. On the other hand the workmen representative argued that after the introduction of section 2 (A) of the I.D. Act an individual can raise the industrial dispute in respect of his dismissal, termination etc without the support of the union or a substantial number of co-workmen. I agreeing with the contention of the workmen representative and decide this issue against the management.

Issue No. 2.—The case of the management is that a meeting of the Managing Directors of Sugar Mills was held on 2nd September, 1977 under the chairmanship of Chief Minister, Haryana wherein it was decided alongwith other things that there was over staffing in the factories much in excess of requirements and there was room for cutting down the strength of the staff and screening of the staff should also be made so as to weed out inexperienced incompetent and undesirable persons. Screening committee was formed and on receipt of recommendations from the screening committee the meeting of the Board of Directors was held on 14th October, 1977 to consider and approve the recommendations of the staff screening committee. Ex.M-1 was the copy of the proceedings. It was decided to abolish some of the posts and to retrench some of the other workmen who were found surplus as per the law. All these workmen were given notice of termination and they were paid the notice pay alongwith the retrenchment compensation whosoever was eligible to receive the same. The reduction in the staff was made in order to effect economy as the management experienced heavy losses during the first season.

The workmen have also admitted the receipt of notices of termination as well as the retrenchment compensation but the workmen have stated that they had not been served with notice under section 9(A) of the I.D. Act for effecting changes in conditions of their services which fact has also being admitted by the management witness in their cross examination. The decision taken in the meeting of the Managing Directors and the decisions taken in the meeting of the Board of Directors copy and the admissions of the workmen regarding the receipt of notices and retrenchment compensation goes to justify the action taken by

the management and proves the bonafides of the management but the management has not been able to fulfill the mandatory provisions of section 9(A) of the I.D. Act, 1947 which is reproduced as under:—

No employer who propose to effect any change in the condition of service applicable to any workmen in respect of any matter specified in the fourth schedule, shall effect such—(a) without giving to the workmen likely to be effected by such change a notice in the prescribed manner of nature of the change proposed to be effected; or (b) within twenty-one days of giving such notice.

Notice under section 9(A) is a must when condition of service are to be changed in order to bring about Rationalisation, Standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen. Rationalisation further connotes in relation to an industry "to organise so as to achieve greater efficiency and economy". The management has undoubtedly effected such changes in order to achieve better results with less staff. The non-observance of the provisions contained in section 9(A) has rendered the order of retrenchment/termination improper and as such illegal but for this action of the management would have been perfectly justified and legal both. The awarding of full back wages to the workmen under these circumstances when the management has acted in a bonafide manner and according to them after observing all the legal formalities would be unjust. This is a legal lacuna which went unobserved by the management and for this lapse on their part the reinstatement of the workmen will be just and proper penalty to the management for not complying with the provisions of section 9(A) of the I.D. Act. I therefore direct the management to reinstate the workmen namely S/Shri Hukam Singh, Ram Phal, Dharmvir Singh, Baljit Singh, Rajinder Singh and Ravi Parkash with continuity of service and 50% back wages as all the workmen have denied the suggestion put to them by the management representative in their cross examination that they did not try for obtaining some job during the period of unemployment. All of them have stated that they had registered their names with the Employment Exchange and also tried their best to secure job for them but they could not. Under these circumstances the workman cannot be deprived of whole of their wages. But the management has acted in a bonafide manner without any ulterior motives, the management deserves some concession which they are granted in the form of 50% back wages in place of full back wages which they were liable to pay to the workmen under the normal rules.

The references are answered and returned in these terms. It is further ordered that a copy of this award may also be placed on each of the files in references No. 158, 159, 160, 161 and 162 all of 1979.

Dated the 30th May, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court Haryana, Rohtak.

Endst. No. 1890, dated the 6th June, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court Haryana, Rohtak.